

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

<p>RIN LAY,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>MICHAEL J. ASTRUE, Commissioner of Social Security,</p> <p style="text-align: center;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Civil No.07cv1112-JLS(NLS)</p> <p>REPORT AND RECOMMENDATION RE: PLAINTIFF'S AMENDED MOTION FOR SUMMARY JUDGMENT AND DEFENDANT'S CROSS MOTION FOR SUMMARY JUDGMENT</p> <p>[Doc. Nos. 15 & 16]</p>
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Plaintiff Rin Lay brings this action pursuant to the Social Security Act, 42 U.S.C. § 405(g),¹ to obtain judicial review of a final decision of the Commissioner of Social Security ("Commissioner") denying his application for Supplemental Security Income payments ("SSI") under Title II of the Social Security Act, 42 U.S.C. §§ 1381, *et seq.* Plaintiff has filed an Amended Motion for Summary Judgment [Doc. No. 15], arguing that he should have been found "disabled" under the Act, and that the Appeals Council's decision adopting Administrative Law Judge ("ALJ") Edward D. Steinman's decision of May 26, 2006 denying him benefits should be reversed because it is not supported by substantial evidence and is based on legal error. The Commissioner has filed a cross-Motion for Summary Judgment and

¹ 42 U.S.C. § 405(g) provides:

Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party ... may obtain a review of such decision by a civil action ... brought in the district court of the United States.... The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing. The findings of the Commissioner ... as to any fact, if supported by substantial evidence, shall be conclusive.

1 Opposition to Plaintiff's motion [Doc. No. 16], and Plaintiff filed a Reply [Doc. No. 17]. After careful
 2 consideration of the papers, the administrative record, and the applicable law, this Court
 3 **RECOMMENDS** that Plaintiff's Amended Motion for Summary Judgment [Doc. No. 15] be **DENIED**,
 4 and the Commissioner's cross-Motion for Summary Judgment [Doc. No. 16] be **GRANTED**.

5 PROCEDURAL HISTORY

6 Plaintiff applied for SSI benefits on November 17, 2004. [Administrative Record ("AR") at 56-
 7 62.] Plaintiff alleged onset of disability as of January 1, 2003. [AR at 56.] Plaintiff claimed to suffer
 8 from diabetes, high blood pressure, frequent headaches, and arthritis. [AR at 64.] On April 15, 2005,
 9 the Social Security Administration ("Administration") determined Plaintiff was not disabled and denied
 10 him benefits. [AR at 27-31.] Plaintiff requested reconsideration of his application, and the
 11 Administration denied benefits again after reconsideration. [AR at 34-39.] On July 27, 2005, Plaintiff
 12 requested an administrative hearing before an ALJ to consider his application. [AR at 40.]

13 On April 12, 2006, the ALJ conducted a hearing to consider the merits of Plaintiff's application.
 14 [AR at 286-99.] This hearing resulted in his application being denied by the ALJ in a written decision
 15 dated May 26, 2006. [AR at 19-24.] Plaintiff disagreed with the ALJ's decision, and on July 26, 2006,
 16 he requested an Appeals Council Review of the decision. [AR at 10.] On April 26, 2007, the Appeals
 17 Council concluded there was no basis for granting Plaintiff's request for review and affirmed the ALJ's
 18 decision, which became the final decision of the Commissioner. [AR at 4-7.]

19 After having exhausted all administrative remedies, Plaintiff initiated this action challenging the
 20 proceedings in connection with the Commissioner adopting the ALJ's decision. (*See Plaintiff's*
 21 *Complaint*, Doc. No. 1.) The presiding District Judge referred all matters in this action to the
 22 undersigned Magistrate Judge for report and recommendation. (*See Doc. No. 5.*) Plaintiff filed an
 23 Amended Motion for Summary Judgment [Doc. No. 15], requesting that the Court reverse the ALJ's
 24 decision and remand for payment of benefits. The Commissioner filed a cross-Motion for Summary
 25 Judgment and Opposition to Plaintiff's motion [Doc. No. 16], requesting that the ALJ's decision be
 26 affirmed. Plaintiff filed an opposition/reply to the Commissioner's cross-motion [Doc. No. 17], and the
 27 matter was taken under submission.

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FACTUAL BACKGROUND

1. PLAINTIFF'S TESTIMONY

Plaintiff was born on October 5, 1959 and was 46 years old on the date of the ALJ hearing. [AR at 56; 19.] At the hearing, having been duly sworn by the ALJ, and with the assistance of a Cambodian interpreter, Plaintiff testified that he has been a Buddhist monk for eighteen years, and he came to the United States in 1995 to live and work in a Buddhist temple. [AR at 289.] Plaintiff further testified that he no longer lived or worked at the temple due to his health, but he continued to be a monk and he visited temple twice a week in order to study the bible, for one to three hours at a time. [AR at 290-91.] Plaintiff stated that he no longer teaches Buddhism to students because of illness and a lack of energy. [AR at 294.] Plaintiff specifically claimed that his diabetes, headaches, dizziness, back pain, and arm pain prevent him from being able to sit for more than an hour to an hour and a half at a time. [AR at 294-95.] Also, Plaintiff testified that he has to rest frequently throughout the day and that he can no longer drive a car more than a short distance. [AR at 295.]

2. MEDICAL & VOCATIONAL EVIDENCE PRESENTED

A. Vocational Expert: Bonnie Sinclair

Bonnie Sinclair testified as a vocational expert at the administrative hearing; no medical experts testified at the hearing. [AR at 297-298.] The ALJ presented a hypothetical encompassing various aspects of Plaintiff's physical and mental limitations. [AR at 297.] The hypothetical assumed the following facts and limitations: a young individual, seven years of education, prior work as a Buddhist monk, can do light work, can lift and carry 20 pounds on occasion and 10 pounds frequently; no ropes, ladders, or scaffolds; occasional overhead reaching with the left upper extremity; avoid a concentrated exposure to extreme cold and hazards. [AR at 298.] Ms. Sinclair found that given those limitations and facts, Plaintiff would be capable of performing his relevant past work as a Buddhist monk. [*Id.*] The ALJ posed a second hypothetical based on Plaintiff's internal medicine consultative exam in March 2005 that assumed the following limitations: can lift and carry 20 pounds on occasion and 10 pounds frequently; stand and walk six out of eight hours per work day; sit six out of eight; limited reaching with left shoulder overhead; no working at heights or walking on uneven terrain due to dizziness. [AR at 298.] Ms. Sinclair found that given those limitations, Plaintiff would be capable of performing his past

1 work as a Buddhist monk. [*Id.*] The ALJ posed a third hypothetical based on the April 2006 assessment
2 of Plaintiff by Dr. Nguyen that assumed the limitation of having to work less than full time. [*Id.*] Ms.
3 Sinclair testified that under such a limitation, Plaintiff would not be able to perform his past work as a
4 Buddhist monk. [*Id.*] Finally, the ALJ posed a fourth hypothetical based on Plaintiff's statement,
5 assuming the limitation that Plaintiff cannot work as a monk due to his illness. [*Id.*] Ms. Sinclair stated
6 that based on Plaintiff's statement, he would not be able to work as a monk or perform any other
7 relevant work. [*Id.*] This final hypothetical concluded the testimony taken at Plaintiff's administrative
8 hearing.

9 *B. Medical Evidence in the Record*

10 The relevant medical evidence shows that Plaintiff has received treatment for the past ten years
11 for chronic head pain, low back pain, diabetes, and degenerative discogenic disease of the neck. In
12 December 1997, Dr. Bonnie Henry at Mid City Community Clinic treated Plaintiff for headaches lasting
13 three to four days at a time and back pain. [AR at 139.] Since January 2004, Plaintiff has received
14 treatment for diabetes. [AR at 101-107; 264-285.] On March 28, 2005, Dr. Elizabeth Locke performed
15 a complete internal medicine evaluation on Plaintiff and diagnosed hypertension, type II diabetes, and
16 complaints of daily headaches and dizziness. [AR at 161.] Dr. Locke opined that Plaintiff could lift and
17 carry 20 pounds occasionally and 10 pounds frequently, could stand and walk for six hours during an
18 eight-hour workday, and could sit for six or more hours during an eight-hour workday. [*Id.*] Dr. Locke
19 also noted that Plaintiff had limited reaching and movement with the left shoulder overhead and could
20 not work at heights or walk on uneven terrain due to dizziness. [*Id.*] On April 13, 2005, a state agency
21 reviewing physician agreed with Dr. Locke's opinion regarding Plaintiff's ability to lift and stand/walk
22 and found Plaintiff's symptom allegations credible but the severity of his condition not disabling. [AR
23 at 175.]

24 On March 28, 2006, Dr. Minh Nguyen reported that Plaintiff sometimes has one to two
25 headaches per month and sometimes as many as four to five headaches per month. [AR at 179.] Dr.
26 Nguyen stated that Plaintiff's headaches have improved and occur less frequently after medication, but
27 may cause a work interruption and may require him to leave work. [*Id.*] On April 7, 2006, Dr. Huong
28 Nguyen reported that Plaintiff has a history of chronic headaches and should not work in an

1 environment with dangerous machinery. [AR at 180.] Dr. Nguyen opined that Plaintiff is limited to
2 sitting and walking for two hours at a time, can continuously lift 10 pounds and occasionally lift up to
3 25 pounds. [*Id.*]

4 **3. ALJ'S FINDINGS**

5 After a discussion of the evidence in the record, the ALJ determined that Plaintiff was not
6 entitled to SSI benefits. [AR at 10-19.] The ALJ found that the medical evidence demonstrates that
7 Plaintiff suffers from insulin dependent diabetes mellitus, migraine headaches, and high blood pressure,
8 and that the impairments are "severe" within the meaning of the Regulations. [AR at 20.] The ALJ
9 concluded that Plaintiff's impairments were not of listing severity, however. [*Id.*] The ALJ determined
10 that Plaintiff retained the residual functional capacity to perform light level work. [AR at 20-21.]
11 Specifically, the ALJ concluded that Plaintiff could lift/carry twenty pounds occasionally and ten
12 pounds frequently; stand and/or walk for six hours or sit for six hours in an eight-hour workday; avoid
13 climbing ladders, ropes, and scaffolds; occasional postural limitations; occasional overhead reaching
14 with the left upper extremity; avoid concentrated exposure to extreme cold and hazards; and no walking
15 on uneven terrain due to dizziness. [AR at 21.]

16 In determining RFC, the ALJ affixed little weight to Dr. Huong Nguyen's physical capacities
17 evaluation, finding that although his medical findings were generally consistent with the medical
18 findings in Plaintiff's treatment records, his functional assessment was not. [AR at 21.] Rather, the ALJ
19 affixed great weight to the consultative internal medicine evaluation of Dr. Locke, and noted that during
20 his physical examination Plaintiff was in no apparent distress and had a normal blood pressure. [*Id.*]
21 His examination revealed a full range of motion in the shoulders bilaterally with tenderness in the left
22 shoulder with abduction. His neurological and cardiovascular exams were within normal limitations.
23 [*Id.*] The ALJ found Plaintiff's subjective complaints of pain excessive in relation to the objective
24 medical evidence and therefore not totally credible based on multiple "clear and convincing reasons,"
25 including the following: (1) on March 28, 2005, Plaintiff reported that a CT scan was done due to his
26 chronic headaches with negative results; (2) Plaintiff's treatment records revealed that his diabetes and
27 hypertension are reasonably well controlled; (3) Plaintiff has undergone conservative treatment; (4)
28 Plaintiff has not taken any medications that have imposed disabling side effects or medications at

1 dosages commensurate with the alleged levels of pain; (5) the record is devoid of Plaintiff suffering
 2 from any disabling side effects from his medications; (6) no treating or examining physician has opined
 3 that Plaintiff is totally and permanently disabled from work; (7) Plaintiff was able to participate in the
 4 administrative hearing and respond to the questioning without any apparent difficulties; and (8)
 5 concerning his activities of daily living, Plaintiff described daily activities which are not limited to the
 6 extent one would expect, given the complaints of disabling symptoms and limitations. [AR at 22.] The
 7 ALJ also noted that the vocational expert testified during the hearing that Plaintiff could perform his
 8 past relevant work as a Buddhist monk as previously performed and as performed in the national
 9 economy. Accordingly, the ALJ denied Plaintiff's claim for benefits. [*Id.*]

10 DISCUSSION

11 *I. LEGAL STANDARD*

12 The Social Security Act authorizes payment of SSI payments to individuals who have an
 13 "inability to engage in any substantial gainful activity by reason of any medically determinable physical
 14 or mental impairment which can be expected to result in death or which has lasted or can be expected to
 15 last for a continuous period of not less than 12 months." 42 U.S.C. § 1382c(a)(3)(A). The disabling
 16 impairment must be so severe that the claimant is not only unable to do his previous work, but,
 17 considering age, education, and work experience, cannot engage in any kind of substantial gainful work
 18 that exists in the national economy. *Id.* § 1382c(a)(3)(B).

19 The Commissioner makes this assessment using a five-step analysis. First, the Commissioner
 20 determines whether a claimant is engaged in "substantial gainful activity." If so, the claimant is not
 21 disabled. *See* 20 C.F.R. § 416.920(b). Second, the Commissioner determines whether the claimant has
 22 a "severe impairment or combination of impairments" that significantly limits the claimant's physical or
 23 mental ability to do basic work activities. If not, the claimant is not disabled. *Id.* § 416.920(c). Third,
 24 the medical evidence of the claimant's impairment is compared to a list of impairments that are
 25 presumed severe enough to preclude work; if the claimant's impairment meets or equals one of the listed
 26 impairments, benefits are awarded. *Id.* § 416.920(d). Fourth, if the impairment meets or equals one of
 27 the listed impairments, the Commissioner determines whether the claimant can do his past relevant
 28 work. If the claimant can do his past work, benefits are denied. *Id.* § 416.920(e). If the claimant cannot

1 perform his past relevant work, the burden shifts to the Commissioner. In step five, the Commissioner
 2 must establish that the claimant can perform other work. *Id.* § 416.920(f). If the Commissioner meets
 3 this burden and proves that the claimant is able to perform other work that exists in the national
 4 economy, then benefits are denied. *Id.* § 416.966.

5 Section 405(g) of the Social Security Act allows unsuccessful applicants to seek judicial review
 6 of a final agency decision of the Commissioner. 42 U.S.C. §§ 405(g). The scope of judicial review is
 7 limited, however, and the Commissioner's denial of benefits "will be disturbed only if it is not supported
 8 by substantial evidence or is based on legal error." *Browner v. Sec'y of Health & Human Servs.*, 839
 9 F.2d 432, 433 (9th Cir. 1988) (citing *Green v. Heckler*, 803 F.2d 528, 529 (9th Cir. 1986)).

10 Substantial evidence means "more than a mere scintilla" but less than a preponderance.
 11 *Sandqathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997). "[I]t is such relevant evidence as a reasonable
 12 mind might accept as adequate to support a conclusion." *Id.* (quoting *Andrews v. Shalala*, 53 F.3d 1035,
 13 1039 (9th Cir. 1995)). The court must consider the record as a whole, weighing both the evidence that
 14 supports and detracts from the Commissioner's conclusions. *Desrosiers v. Sec'y of Health & Human*
 15 *Servs.*, 846 F.2d 573, 576 (9th Cir. 1988). If the evidence supports more than one rational interpretation,
 16 the court must uphold the ALJ's decision. *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). When
 17 the evidence is inconclusive, "questions of credibility and resolution of conflicts in the testimony are
 18 functions solely of the Secretary." *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982).

19 Even if the reviewing court finds that substantial evidence supports the ALJ's conclusions, the
 20 court must set aside the decision if the ALJ failed to apply the proper legal standards in weighing the
 21 evidence and reaching his or her decision. *Benitez v. Califano*, 573 F.2d 653, 655 (9th Cir. 1978).
 22 Section 405(g) permits a court to enter a judgment affirming, modifying, or reversing the
 23 Commissioner's decision. 42 U.S.C. § 405(g). The reviewing court may also remand the matter to the
 24 Commissioner for further proceedings. *Id.*

25 2. PLAINTIFF'S CLAIMS

26 Plaintiff asserts several grounds for reversal of the ALJ's decision. First, Plaintiff claims that the
 27 ALJ erred when he failed to credit Plaintiff's symptom testimony in evaluating his physical
 28 impairments, particularly with respect to his chronic headaches. (*Plaintiff's Memorandum*, 4.) Plaintiff

1 also argues that the ALJ unfairly penalized him for not seeking more aggressive treatment for his
 2 disabling conditions. (*Id.* at 17.) Second, Plaintiff claims that the ALJ’s residual functional capacity
 3 (“RFC”) assessment is not supported by substantial evidence. (*Id.* at 13.) Third, Finally, Plaintiff
 4 asserts that the ALJ improperly refused to consider new evidence of his neurological and psychiatric
 5 problems. (*Id.* at 18.)

6 A. *Whether the ALJ erred by failing to provide clear and convincing reasons for*
 7 *discrediting Plaintiff’s subjective complaints.*

8 Plaintiff argues that the ALJ minimized the severity of his physical problems and failed to take
 9 adequate consideration of Plaintiff’s symptom testimony. (*Plaintiff’s Memorandum*, 4.) Plaintiff
 10 testified before the ALJ that he can only sit up for one to one and half hours at a time, and must rest
 11 frequently throughout the day due to his chronic headaches and pain, and therefore can no longer work
 12 as a Buddhist monk. [AR at 294-95.] The ALJ discredited Plaintiff’s statements, stating that “to the
 13 extent that it is alleged that he cannot perform work at the limited range of light exertion as recited
 14 above, the Administrative Law Judge finds those allegations are not totally credible...” [AR at 22.] The
 15 ALJ then went on to list nine clear and convincing reasons to support his finding, detailed above in the
 16 section summarizing the ALJ’s decision. [*Id.*] The Commissioner argues that the ALJ properly found
 17 Plaintiff’s subjective statements concerning the intensity and limiting effects of his alleged symptoms
 18 were not fully credible, and that his credibility analysis was sufficiently specific to permit the Court to
 19 conclude that the ALJ did not arbitrarily discredit Plaintiff’s testimony. (*Commissioner’s Memorandum*,
 20 3.)

21 Because there is no affirmative evidence of malingering in this case, the ALJ’s reasons for
 22 rejecting Plaintiff’s testimony must be clear and convincing. *Lester v. Chater*, 81 F.3d 821, 834 (9th
 23 Cir. 1995) (as amended). Once evidence of an underlying medical impairment is introduced, the ALJ
 24 may not discredit the claimant’s testimony as to the severity of symptoms merely because they are
 25 unsupported by objective medical evidence. *Bunnell v. Sullivan*, 947 F.2d 341, 343 (9th Cir. 1991) (en
 26 banc); *see also* SSR 96-7, 61 Fed.Reg. 34483, 34485 (July 2, 1996) (“An individual’s statements about
 27 the intensity and persistence of pain or other symptoms or about the effect the symptoms have on his or
 28 her ability to work may not be disregarded solely because they are not substantiated by objective

1 medical evidence.”). In addition, the ALJ “must state specifically which symptom testimony is not
 2 credible and what facts in the record lead to that conclusion.” *Smolen v. Chater*, 80 F.3d 1273, 1284
 3 (9th Cir. 1996) (emphasis added); *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993). This assures the
 4 reviewing court that the ALJ did not arbitrarily dismiss the claimant’s testimony. *Bunnell*, 947 F.2d at
 5 345-46. The ALJ may consider at least the following factors when weighing the claimant’s credibility:
 6 “[claimant’s] reputation for truthfulness, inconsistencies either in [claimant’s] testimony or between
 7 testimony and conduct, [claimant’s] daily activities, work record, and testimony from physicians and
 8 third parties concerning the nature, severity, and effect of the symptoms of which [claimant] complains.”
 9 *Light v. Social Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997).

10 The ALJ considered Plaintiff’s subjective complaints of pain, including his complaints of
 11 chronic headaches, and determined that, in light of the record, they were not fully credible. In making
 12 this determination, the ALJ relied on the results of a CT scan done due to Plaintiff’s chronic headaches
 13 which came back with negative results. [AR at 22, 161.] The ALJ determined, however, that Plaintiff
 14 does suffer from migraines, and specifically considered medical evidence regarding the impact of
 15 Plaintiff’s migraines on his ability to work. [AR at 21.] The ALJ relied on the opinion of treating
 16 physician Dr. Minh Nguyen, who reported that Plaintiff’s headaches are improved and less frequent
 17 with medication. [AR at 21, 179.] The ALJ noted Plaintiff’s treatment records, which demonstrate that
 18 his diabetes and hypertension are reasonably controlled, and observed that Plaintiff’s report of his daily
 19 activities belied his claim that he was totally unable to work at a light level of exertion. [AR at 21-22.]
 20 These are specific, cogent reasons for discrediting Plaintiff’s complaints about the severity of his
 21 impairments. *See Batson v. Comm’r of the Soc. Sec. Adm’n.*, 359 F.3d 1190, 1196 (9th Cir. 2004).

22 Plaintiff refers to the portion of the ALJ’s written decision where he states that Plaintiff
 23 underwent “conservative treatment” for his ailments, and claims that the ALJ penalized him for the fact
 24 that he is destitute and unable to seek surgery or more aggressive treatment. (*Plaintiff’s Memorandum*,
 25 17.) The Commissioner argues that this claim lacks merit, and cites Social Security Regulation 96-7p
 26 which confirms that an ALJ may take into account the nature of treatment received by a claimant when
 27 trying to assess Plaintiff’s incredible subjective statements of pain vis-a-vis the severity of his disabling
 28 conditions. (*Commissioner’s Memorandum*, 5.)

1 The ALJ supported his finding that Plaintiff's testimony regarding the pain he experiences due to
 2 his headaches and orthopedic problems is not fully credible with clear and convincing reasons that are
 3 supported by substantial evidence in the record. In addition to referencing the objective medical
 4 evidence documenting the improvements in Plaintiff's headaches after treatment with medication, he
 5 reasonably highlighted Plaintiff's conservative treatment, including use of over-the-counter medications
 6 to alleviate pain. *See Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995) (noting that conservative
 7 treatment suggested lower level of pain than asserted). The ALJ's reasons for his credibility
 8 determination were clear and convincing, sufficiently specific, and supported by substantial evidence in
 9 the record. *See Morgan v. Apfel*, 169 F.3d 595, 599 (9th Cir. 1999) (holding that where the evidence is
 10 susceptible to more than one rational interpretation, it is the ALJ's conclusion that must be upheld).

11 The Court will defer to the ALJ's credibility determinations when they are appropriately
 12 supported in the record by "specific findings justifying that decision." *Cotton v. Bowen*, 799 F.2d 1403,
 13 1407 (9th Cir. 1986); *see also Bunnell v. Sullivan*, 947 F.2d 341, 342 (9th Cir. 1991) (en banc)
 14 (reaffirming the *Cotton* standard). In the instant case, the ALJ thoroughly discussed the medical
 15 evidence in making his credibility finding. Therefore, the ALJ's assessment is entitled to great
 16 deference and the Court finds no error.

17 *B. Whether the ALJ's Residual Functional Capacity Assessment is Supported by Substantial*
 18 *Evidence.*

19 Plaintiff argues that the ALJ's RFC assessment is legally flawed and not based on substantial
 20 evidence. Specifically, Plaintiff contends that the ALJ incorrectly discredited Plaintiff's testimony
 21 regarding RFC and therefore erroneously disregarded Plaintiff's subjective complaints of pain when
 22 determining that Plaintiff could perform a limited range of light work. (*Plaintiff's Memorandum*, 17.)
 23 The Commissioner argues that the ALJ's credibility findings are supported by substantial evidence and
 24 should not be disturbed. (*Commissioner's Memorandum*, 5.)

25 The ALJ examines the claimant's "residual functional capacity and the physical and mental
 26 demands" of the claimant's past relevant work, 20 C.F.R. § 404.1520(e), at step four of the sequential
 27 process. Although the burden of proof is on the claimant at step four, the ALJ still has the duty to make
 28 the requisite factual findings to support his conclusion. *See SSR 82-62*. The RFC assessment must be

1 based on all of the relevant evidence in the record, including the effects of symptoms that are reasonably
 2 attributed to a medically determinable impairment. Information about symptoms must be given “careful
 3 consideration.” *Id.* To determine residual functional capacity, an ALJ may rely on testimony from a
 4 qualified vocational expert (“VE”). *See Osenbrock v. Apfel*, 240 F.3d 1157, 1162 (9th Cir. 2001). In
 5 this case, the ALJ posed to the VE a hypothetical question assuming Plaintiff’s age, education, past
 6 relevant work experience, and physical residual functional capacity. [AR at 22, 297-98.] Based on this
 7 hypothetical question, the VE determined that such an individual could perform Plaintiff’s past relevant
 8 work as a Buddhist monk. [AR at 298.] The ALJ found the VE’s testimony persuasive and adopted it.
 9 [AR at 22.]

10 The ALJ also relied upon the findings and opinions of a consultative examiner, Dr. Locke, and
 11 two state agency reviewing physicians in order to determine Plaintiff’s RFC. [AR at 21.] All three
 12 physicians independently concluded that Plaintiff could lift 20 pounds occasionally, 10 pounds
 13 frequently, could stand and/or walk for six hours during an eight-hour workday, and sit for six hours
 14 during an eight-hour workday. [AR at 161; 167-73.] The ALJ reasonably relied upon these opinions,
 15 each supported by specific clinical findings in Plaintiff’s medical record, to conclude that Plaintiff could
 16 perform his past relevant work as a Buddhist monk.

17 Plaintiff argues that the ALJ, having failed to consider the combination of Plaintiff’s diabetes,
 18 orthopedic problems, and chronic headaches, erroneously concluded that Plaintiff could perform his past
 19 relevant work. (*Plaintiff’s Memorandum*, 16.) However, Plaintiff’s own medical record contains
 20 numerous clinical observations and reports that Plaintiff’s diabetes is controlled, his orthopedic
 21 problems are non-disabling, and his headaches have improved with medication. The ALJ appropriately
 22 relied on the testimony of the VE to determine whether Plaintiff could perform still perform light work
 23 given his combination of ailments. [AR at 297-98.] Plaintiff’s consultative and examining physicians
 24 agreed with respect to his exertional limitations, and none of his physicians found him to be disabled.²

26 ² In his reply brief, Plaintiff argues that his consultative physicians, particularly Dr. Locke, failed to account for his
 27 orthopedic condition, and the resulting pain caused by nerve impingement due to degenerative disc disease at L4-5.
 28 (*Plaintiff’s Reply*, 2-3.) Specifically, Plaintiff contends that Dr. Locke did not reference his 1998 X-rays which indicated the
 “severe” degenerative condition, and thus the ALJ erred in giving her evaluation of his RFC full credence. (*Id.*, citing AR at
 154.) However, the Court notes that Dr. Locke referred Plaintiff for X-rays in March 2005, which revealed no significant
 degenerative changes, and no impingement syndrome. [AR at 164.] The results demonstrated a narrowing of the L4-5 disc

1 The Court therefore finds that the ALJ's RFC assessment was not in error.

2 *C. Whether Good Cause Exists to Consider New Medical Evidence*

3 Finally, Plaintiff claims that he presents new evidence of neurological and psychiatric problems,
 4 and good cause exists for his late submission of evidence in so far as he is now represented by new
 5 counsel who has assisted him in further developing the medical record with evidence that was not
 6 available to the ALJ prior to the hearing. (*Plaintiff's Memorandum*, 20.) A court may remand a case
 7 "upon a showing that there is new evidence which is material and that there is good cause for the failure
 8 to incorporate such evidence into the record in a prior proceeding." 42 U.S.C. § 405(g). The
 9 Commissioner argues that Plaintiff presents no basis for why the Court should consider new medical
 10 evidence. (*Commissioner's Memorandum*, 9.)

11 Plaintiff presents the results of objective clinical tests performed on Plaintiff on June 26, 2006 by
 12 Dr. Lessner, Ph.D., a clinical psychologist, who concluded that Plaintiff suffers from a severe depressive
 13 disorder. (*Plaintiff's Memorandum*, 19; AR at 210.) Plaintiff also presents medical records from
 14 Plaintiff's treating psychiatrist, Dr. Henderson, who concluded that Plaintiff is significantly mentally
 15 impaired. (*Id.*; AR at 191.) The Appeals Council actually considered Dr. Henderson's report, and
 16 nevertheless upheld the ALJ's decision not to award benefits to Plaintiff. [AR at 4-7.] The Council
 17 noted that Dr. Henderson's report contained opinions not supported anywhere else in Plaintiff's medical
 18 records. [AR at 5.] Furthermore, the Council observed that Dr. Henderson's opinion did not shift the
 19 weight of the evidence for the period at issue before the ALJ, and was immaterial. [AR at 5.]

20 Plaintiff argues that he had good cause for failing to present these new medical reports as
 21 evidence during his administrative hearing, because they did not exist at that time. However, Plaintiff
 22 does not explain why he did not seek these evaluations prior to the hearing, aside from his reference to
 23 having obtained new counsel; the Court notes that he was represented by counsel at the ALJ hearing as
 24 well. The courts cannot remand a case every time a claimant obtains a new medical opinion supporting
 25 his case after the ALJ has rendered a decision. The Ninth Circuit has held that this simply does not
 26 constitute good cause. "The 'good cause' requirement would be meaningless if such circumstances

27 _____
 28 space, with early degenerative disc disease, but were otherwise negative. [*Id.*] As such, Dr. Locke's evaluation of Plaintiff
 was based on a fully developed medical record with respect to Plaintiff's orthopedic problems, and the ALJ reasonably relied
 on her opinion.

1 were sufficient to allow introduction of new evidence.” *Allen v. Secretary of Health and Human*
2 *Services*, 726 F.2d 1470, 1473 (9th Cir. 1984).

3 **CONCLUSION**


4 Based on a review of the record and consideration of the briefs submitted, the Court
5 **RECOMMENDS** that the Commissioner’s Motion for Summary Judgment [Doc. No. 16] be
6 **GRANTED** and Plaintiff’s Amended Motion for Summary Judgment [Doc. No. 15] be **DENIED**.

7 This Report and Recommendation is submitted by the undersigned Magistrate Judge to the
8 District Judge assigned to this case, pursuant to the provision of Title 28, United States Code, section
9 636(b)(1).

10 Any party may file written objections with the Court and serve a copy on all parties within ten
11 (10) days of the date of this report. The document should be captioned “Objections to Report and
12 Recommendation.”

13 **IT IS SO ORDERED.**

14 DATED: April 4, 2008

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16 Hon. Nita L. Stormes
17 U.S. Magistrate Judge
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